Supreme Court, U.S.
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No. 07-338

In The
Supreme Court of the United States

JAY M. STRUVE
Petitioner,
v.
WICOMICO COUNTY, MARYLAND
Respondent.

On Petition For Writ Of Certiorari
To The Court of Appeals of Maryland

BRIEF IN OPPOSITION

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October 12, 2007

QUESTIONS PRESENTED

1. Does the act of Congress known as the Uniform Vehicle Code, in a State that has voluntarily adopted it, supersede the local laws concerning zoning, made by charter local counties, as the Vehicle Code, restricts local governments from passing laws on the subjects contained in itself?

2. If zoning laws are in irreconcilable conflict with each other concerning the same subject and were made law at the same time, are they unenforceable because no one can reasonably interpret them with certainty, and too vague to be considered a "law" under the U.S. Constitution's Due Process requirement of a minimum degree of definiteness in the statutory prescription of standards to prevent arbitrary and discriminatory enforcement?

3. If Local Laws severely restricting recreational vehicles, travel trailers, etc. were facially created to ban the Gypsies from the local area, and were and are enforced for that purpose, are those laws in conflict with the Constitutional guarantees of equal protection and due process, that is; are the gypsies, such as this petitioner, considered an ethnic or religious group worthy of protection?

PARTIES TO THE CASE AND RULE 29.6 STATEMENT

Petitioner here and appellant below is Jay M. Struve, a resident of Wicomico County, Maryland.

Respondent and appellee below is Wicomico County, Maryland, a body politic in the State of Maryland.

This opposition brief is being filed by a governmental entity so the requirements of Rule 29.6 do not apply.

OPINIONS BELOW

The opinion of the court of special appeals is unpublished and reprinted on the ninth (9th) page of the Petition for Cert, although it is misnumbered as page two (2). The opinion of the court of special appeals affirmed the opinion of the circuit court and rightly noted that the laws questioned by Petitioner as being unconstitutional, were valid laws. Petitioner tried to argue that the State's Motor Vehicle laws prevented the county from passing any laws that concerned vehicles. The county zoning laws in question did not attempt to regulate the licensing and use of motor vehicles, the zoning code was concerning with land use and nuisances, as applied to Petitioner's property littered with junk vehicles.

JURISDICTION

The judgment of Maryland's Court of Special Appeals was entered on December 21, 2006. Petitioner appealed that decision to the Maryland Court of Appeals. His Petition for Writ of Certiorari to the Maryland Court of Appeals was denied on April 13, 2007. The petition for writ of certiorari to the Supreme Court of the United States was filed on June 29, 2007. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

Petitioner claims there is a question of validity of a state statute which is repugnant to the Constitution. Petitioner claims a local zoning code governing land use and nuisances on property is somehow in conflict with motor vehicle laws for licensing and registration. The zoning code does not seek to license or register vehicles. The zoning code seeks to prevent persons from using their land unlawfully to maintain health nuisances by amassing numerous vehicles, travel trailers, and trash on said land.

Petitioner claims a 4th Amendment violation. There has been no search or seizure of any of Petitioner's property. Petitioner has received municipal citations for maintaining numerous junk vehicles and travel trailers in an area of the county not zoned for such.

Petitioner claims a 14th Amendment violation. Petitioner has not been deprived of his life, liberty, or property at all, much less without due process of law. Petitioner has been taking full advantage of his equal protection of the laws by continually appealing a very valid zoning code to avoid cleaning up his property and sparing his neighbors the stench and health hazards that he maintains on his property.

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BRIEF IN OPPOSITION

STATEMENT

This case began when Petitioner, a property owner in Wicomico County, Maryland, was cited for having numerous inoperable vehicles, travel trailers and trash on his property in violation of the local zoning code. Petitioner sought a special exception to be allowed to keep all the vehicles and trailers on his property and also to be allowed to live in them without the benefit of electricity, running water or sewage facilities. The county code, for health reasons, did not permit what the Petitioner wanted and his request was therefore denied. Following a request for a special exception before the Wicomico County Board of Zoning Appeals, Petitioner appealed the board's decision to the Circuit Court for Wicomico County. Petitioner lost that administrative appeal. Following the hearing before the Circuit Court, Petitioner appealed that decision to Maryland's Court of Special Appeals claiming that the local zoning laws were illegal. The Court of Special Appeals, in an unreported opinion, held that the county had the legislative power to regulate zoning. The zoning law in question was not an attempt to regulate the use or licensing of vehicles, but was concerned with the use of land, and further, that the Petitioner's reliance on motor vehicle statutes was misplaced

because the zoning code and the motor vehicle code dealt with different subjects. Petitioner then appealed this decision to the Maryland Court of Appeals. The Court of Appeals denied certiorari. Petitioner next appealed to this court.

The petition for certiorari from the April 13, 2007 court of appeals denial for certiorari satisfies none of the criteria for review in this Court. There is no conflict of law with any other court. There is no issue of federal law or federal question in this case. Petitioner seeks certiorari from this court in an effort to maintain a health nuisance on his property in violation of local zoning codes. There is no precedent of this Court to support Petitioner's position or to grant certiorari for this case. Nor is this a case in which the Court is called upon to interpret or evaluate the constitutionality of a legislative enactment. The claimed conflict with the local laws is non-existent. Petitioner identifies no statutory provision that supports his position. Petitioner's current attempt is to turn this into a constitutional issue by reinterpreting laws and raising claims without support. The Court should reject Petitioner's request for certiorari.

ARGUMENT

Throughout Petitioner's appeals he has cited numerous obsolete laws that have been superceded by current law. He also cites the Uniform Vehicle Code as being an act of Congress. The Uniform Vehicle Code is a privately prepared set of traffic laws drafted by the National Committee on Uniform Traffic Laws and Ordinances (NCUTLO) and voluntarily adopted or partially incorporated by various states. The NCUTLO is a private, non-profit membership organization dedicated to drafting model legislation for traffic safety issues. It is not Congress.

Petitioner is an intelligent man, yet not possessed of enough of the faculties necessary to understand the zoning laws in question. The issues are these:

1. Wicomico County allows its residents to own and store recreational vehicles on their property.

2. In urban areas persons are allowed one or two recreational vehicles on their property, depending on the zone, and those vehicles must be either parked in driveways, garages, or in back yards.

3. Residents are not allowed to live in recreational vehicles on their property for more than seven consecutive days because temporary travel trailers are not hooked to the proper electric, water and sewage facilities to maintain the public health.

4. In rural areas, the same rules apply. For persons wishing to store numerous recreational vehicles or automobiles on property, this would constitute either a campground, a parking lot, or a salvage yard. The county has legislated which areas of the county are suitable for these types of uses. For Petitioner to store so many recreational vehicles on his property, he would need to apply for a special exception.

5. Petitioner applied for a special exception, however, his application was denied because he failed to submit any evidence to prove whether his use was consistent with the county's comprehensive plan, that his activity did not adversely effect the health, safety and general welfare of the area, or that his proposed use was

not incompatible or detrimental to the development of the adjacent properties.

6. Further, Petitioner also wanted the Board of Zoning Appeals to give him permission to live in his temporary travel trailers without electricity, running water or sewage facilities. The Board of Zoning Appeals did not have the authority to grant Petitioner's request to live in the travel trailers. The county zones the use of land within its borders to protect the health and safety of the public from contaminants and disease.

7. Petitioner lives in a rural area of the county that does not permit salvage yards. Petitioner currently has numerous inoperable motor vehicles on his property plus 4-5 temporary travel trailers that he lives in without electricity, running water, or sewage disposal. The human waste produced by Petitioner and his animals are a health hazard for himself and the surrounding properties.

8. The County has issued numerous municipal citations against Petitioner for maintaining said nuisance on his property. When he was told he could not keep all those junk vehicles on his property, he believed only the State could tell him what to do with his vehicles.

9. Petitioner is confusing land use law with motor vehicle law. The County is **not** saying Petitioner has to register his vehicles. The County is trying to get Petitioner to clean up his property for his own health and that of his neighbors.

10. If Petitioner wanted to maintain a salvage yard for all the vehicles and appliances he hauls to this property, he could not. Salvage yards are not permitted in this zone. He would have to locate his salvage yard to an area of the county where it is allowed and where it would have a smaller impact on the surrounding properties.

CERTIFICATE OF COMPLIANCE

No. 07-338

Jay M. Struve

Petitioner

v

Wicomico County, Maryland

Respondent

As required by Supreme Court Rule 33.1(h), I certify that the Respondent's Brief in Opposition contains 1,104 words, excluding the parts of the brief that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2007

_____

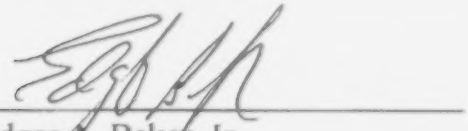
Edgar A. Baker, Jr.
Attorney for Respondent

CONCLUSION

There is no merit to Petitioner's writ for certiorari. There is no basis in law for what Petitioner wants and it is not in the best interests of Petitioner's health or the health of the community to allow him to maintain a health nuisance just because he disagrees with the law.

Respondent respectfully submits that the petition for writ of certiorari should be denied.

Respectfully submitted,



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